Supreme Court, U.S.
FILED
NOV 12 1988
JOSEPH E. SPANIOL, JR.
CLERK

No. 88-665

In The

Supreme Court of the United States

October Term, 1988

JERRY H. SUMMERS,

Appellant,

vs.

ROBERT L. THOMPSON, *et al.*,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF TENNESSEE

MOTION OF APPELLEE, CHARLES W. BURSON, ATTORNEY GENERAL AND REPORTER OF THE STATE OF TENNESSE, TO DISMISS OR AFFIRM

CHARLES W. BURSON
Attorney General & Reporter
State of Tennessee
[Counsel of Record]

MICHAEL W. CATALANO
Deputy Attorney General
State of Tennessee

ANDY D. BENNETT
Deputy Attorney General
State of Tennessee

KEVIN STEILING
Assistant Attorney General
State of Tennessee
450 James Robertson Parkway
Nashville, Tennessee 37219

Counsel for Appellees

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
or call collect (402) 342-2831

15 pp

QUESTIONS PRESENTED

1. Whether Tenn. Code Ann. §§ 6-21-501 and 16-18-102 which provide for at-will termination of a municipal judge, who has jurisdiction to impose fines up to $50.00 and incarcerate for terms of up to 90 days, by the governing body of that municipality violates the doctrine of separation of powers contained in Article III, § 1 of the United States Constitution?

2. Whether the doctrine of separation of powers contained in Article III, § 1 of the United States Constitution is applicable to the states through the due process and equal protection clauses of the Fifth and Fourteenth Amendments to the United States Constitution?

PARTIES TO THE PROCEEDINGS BELOW

The appellant in this action is Jerry H. Summers. The appellees in this action are: Mayor Robert L. Thompson, Commissioners James Ables, Don Gentry, Bryson Johnson, and Jimmy Williamson, in their capacities as Commissioners of the City of Soddy-Daisy, Tennessee, Robert Eckard, in his capacity as Police Chief of Soddy-Daisy, Tennessee, the City of Soddy-Daisy, Tennessee, and Charles W. Burson, Attorney General and Reporter for the States of Tennessee.[1]

---

[1] Pursuant to Rule 40.3 of the Supreme Court Rules, Charles W. Burson has been substituted for W. J. Michael Cody as the Attorney General and Reporter for the State of Tennessee as a result of Mr. Cody's resignation and Mr. Burson's appointment effective October 1, 1988.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDINGS BELOW	ii
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
ARGUMENT:	
I. THE DECISION OF THE SUPREME COURT OF TENNESSEE RESTS ON NON-CONSTITUTIONAL GROUNDS; THEREFORE, THIS COURT SHOULD DISMISS THIS APPEAL	2
II. THE APPLICABILITY OF THE DOCTRINE OF SEPARATION OF POWERS UNDER ARTICLE III SECTION I OF THE UNITED STATES CONSTITUTION TO THE MUNICIPAL COURT OF SODDY-DAISY, TENNESSEE DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION OVER WHICH THIS COURT SHOULD EXERCISE ITS JURISDICTION	5
CONCLUSION	8

TABLE OF AUTHORITIES

Page

CASES CITED:

Cantwell v. Connecticut, 310 U.S. 296 (1940) 7

Dreyer v. Illinois, 187 U.S. 71 (1902) 5, 6

State ex rel. Haywood v. Superintendent, Davidson County Workhouse, 195 Tenn. 265, 259 S.W.2d 159 (1953) 3

Hughes v. Superior Court of California in and for the County of Contra Costa, 339 U.S. 460 (1950) 6

Mayor of the City of Philadelphia v. Educational Equity League, 415 U.S. 605 (1974) 6

Michigan v. Long, 463 U.S. 1032 (1983) 3

Minnesota v. Cloverleaf Creamery Co., 449 U.S. 456 (1981) 6

Prentiss v. Atlantic Coastline Co., 211 U.S. 210 (1908) 6

Ridgeway v. Ridgeway, 454 U.S. 46 (1981) 3

Rose v. Hodges, 423 U.S. 19 (1979) 6

Sweazy v. State of New Hampshire, 354 U.S. 234 (1957) 6

STATUTES:

FEDERAL:

Article III, § 1, United States Constitution 2, 5

Fifth Amendment, United States Constitution 2, 6

Fourteenth Amendment, United States Constitution 2, 6, 7

STATE:

Tenn. Code Ann. § 6-18-101 2

Tenn. Code Ann. § 6-21-501 2

TABLE OF AUTHORITIES—Continued

Page

Tenn. Code Ann. § 6-21-501(b) 2, 3, 4

Tenn. Code Ann. § 16-18-101 (1987 Supp.) 3, 4

Tenn. Code Ann. § 16-18-102 2

Article I, § 8, Tennessee Constitution 2

Article II, § 1, Tennessee Constitution 2

Article II, § 2, Tennessee Constitution 2

MISCELLANEOUS:

Rule 16.1, Supreme Court Rules 1

Justice Brennan, *State Constitutions and the Protection of Individual Rights,* 90 Harv. Law Rev. 489 (1977) 4

No. 88-665

In The

Supreme Court of the United States

October Term, 1988

JERRY H. SUMMERS,

Appellant,

vs.

ROBERT L. THOMPSON, *et al.*,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF TENNESSEE

MOTION OF APPELLEE, CHARLES W. BURSON, ATTORNEY GENERAL AND REPORTER OF THE STATE OF TENNESSE, TO DISMISS OR AFFIRM

Pursuant to Rule 16.1, the appellee, Charles W. Burson, Attorney General and Reporter for the State of Tennessee (appellee) moves to dismiss or affirm the appeal filed on behalf of Jerry H. Summers (appellant). This motion is based upon the fact that the decision of the Supreme Court of Tennessee rests upon independent and adequate state grounds and that the questions on which the decision of this case depends are so unsubstantial as to not need further argument.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional provisions involved in this appeal are Article III, § 1 of the United States Constitution, the Fifth and Fourteenth Amendments of the United States Constitution. The statutory provisions involved are Tenn. Code Ann. §§ 6-21-501, 6-18-101, and 6-18-102. The constitutional provisions are set out in appellant's Jurisdictional Statement at page 2; whereas, the statutory provisions involved are set out in appellant's Jurisdictional Statement at pages A-65 through A-67.

———o———

ARGUMENT

I. THE DECISION OF THE SUPREME COURT OF TENNESSEE RESTS ON NON-CONSTITUTIONAL GROUNDS; THEREFORE, THIS COURT SHOULD DISMISS THIS APPEAL.

From the inception of this litigation, the appellant has contended that Tenn. Code Ann. § 6-21-501, which provides that the municipal judge of Soddy-Daisy is to "serve at the will of the board of commissioners", is violative of the doctrine of separation of powers under Article III, §1 of the United States Constitution and Article II, §§1 and 2 of the Tennessee Constitution and the due process provisions of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, § 8 of the Tennessee Constitution. *See* Appellant's Jurisdictional Statement, page A-23, ¶ 24. However, the Tennessee Supreme Court expressly limited its decision to one of statutory

construction and did not address either the state or federal constitutional issues raised by the appellant. In particular, the Tennessee court stated the following:

> The majority of this Court does not find it necessary to address the constitutional issue presented by this case because the issue may be resolved by a proper construction of the statutes involved. Moreover, the holding of this case is expressly limited to those city courts that are not vested with concurrent jurisdiction with a general sessions court which is an inferior court, under T.C.A. § 6-21-501(b) or T.C.A. § 16-18-101 (Supp. 1987). The jurisdiction of these city courts is wholly limited to traffic violations or violations of city ordinances, as the judges of these courts have no authority to impose fines exceeding $50.00 or to impose extensive terms of imprisonment and, as a practical matter are essentially administrative judges. Such a judge is not cloaked with the powers of a judge of an inferior court within the meaning of Article VI, § 1. See *State ex rel. Haywood v. Superintendent, Davidson County Workhouse*, 195 Tenn. 265, 270-71, 259 S.W.2d 159, 161 (1953).

Appellant's Jurisdictional Statement, page A-61.

This Court has indicated in the past that it has no jurisdiction to entertain an appeal where the decision of a state court is based upon independent and adequate state grounds. *See Michigan v. Long*, 463 U.S. 1032 (1983); *Ridgeway v. Ridgeway*, 454 U.S. 46, 54 (1981). The appellant argued before the courts, below, that the municipal court of Soddy-Daisy, Tennessee was vested with concurrent jurisdiction of a general sessions court in Tennessee, which is an inferior court under Article VI of the Tennessee Constitution. Based upon that argument, the appellant concluded that at-will termination of the municipal

judge by the board of commissioners would be violative of the doctrine of separation of powers under both the Tennessee and United States Constitutions since the municipal court is part of the judicial branch of government in Tennessee.

However, the Supreme Court of Tennessee in its decision held that the municipal court of Soddy-Daisy, Tennessee is not vested with concurrent jurisdiction with a general sessions court in Tennessee under Tenn. Code Ann. §§-6-21-501(b), 16-18-101. This holding pretermits the appellant's federal constitutional argument since the Supreme Court of Tennessee concluded that judges of courts who cannot impose fines to exceed $50.00 are as a practical matter administrative judges and are not cloaked with the powers of a judge of an inferior court within the meaning of Article VI, §1 of the Tennessee Constitution. Such a determination provides an independent and adequate state ground upon which the decision of the Supreme Court of Tennessee rests; therefore, this Court should dismiss this appeal.[2]

---

[2] As Justice Brennan has indicated, judgments based upon an independent and adequate state ground "not only cannot be overturned by, (but) indeed are not even reviewable by the Supreme Court of the United States." Justice Brennan, *State Constitutions and the Protection of Individual Rights,* 90 Harv. Law Rev. 489, 501 (1977).

II. THE APPLICABILITY OF THE DOCTRINE OF SEPARATION OF POWERS UNDER ARTICLE III, SECTION I OF THE UNITED STATES CONSTITUTION TO THE MUNICIPAL COURT OF SODDY-DAISY, TENNESSEE DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION OVER WHICH THIS COURT SHOULD EXERCISE ITS JURISDICTION.

This Court in the case of *Dreyer v. Illinois,* 187 U.S. 71 (1902), stated the following with regard to the applicability of the doctrine of separation of powers under Article III, § 1 of the United States Constitution to State Courts:

> It is only necessary now to say that, even if the statute in question were obnoxious to the objection now urged by plaintiff in error, it would not follow that this Court would review a judgment of the highest Court of the State, which expressly or it by necessary implication sustained it as constitutional. A local statute investing a collection of persons not of the judicial department, with the powers that are judicial, and authorizing them to exercise the pardoning power which alone belongs to the Governor of the State, presents no question under the Constitution of the United States. The right to the due process of law prescribed by the Fourteenth Amendment would not be infringed by a local statute of that character. Whether the legislative, executive or judicial powers of a State shall be kept all together distinct and separate, or whether persons or collections of persons belonging to one department may, in respect to some matters, exert powers, which strictly speaking, pertain to another department of government, is for the determination of the State.

Id. at 83-84.

Subsequent to the *Dreyer* decision, this Court has again and again held that the Fourteenth Amendment leaves the States free to distribute the powers of government as they will between their legislative and judicial branches. See *Hughes v. Superior Court of California in and for the County of Contra Costa,* 339 U.S. 460 (1950); *Prentiss v. Atlantic Coastline Co.,* 211 U.S. 210 (1908); *Rose v. Hodges,* 423 U.S. 19 (1979); *Sweazy v. State of New Hampshire,* 354 U.S. 234 (1957); *Mayor of the City of Philadelphia v. Educational Equity League,* 415 U.S. 605 (1974); *Minnesota v. Cloverleaf Creamery Co.,* 449 U.S. 456 (1981). Thus, it is a well-established principle by this Court that the doctrine of separation of powers under the United States Constitution is not applicable to the states through the Fourteenth Amendment.

The appellant's only argument for this Court to grant jurisdiction in this case is that the *Dreyer* decision should be overruled because since the time of the *Dreyer* decision in 1902, "a number of fundamental constitutional rights have been applied to the States through the Fifth and Fourteenth Amendments. . . . [and that] it is essential that the rights of the individual be protected by the application of federal separation of powers doctrine to the States as well." Appellant's Jurisdictional Statement, pages 4-5. Beyond failing to provide any reasons why this issue may be one of significant national importance justifying this Court's exercise of its jurisdiction, the appellant's analysis is fatally flawed.

This Court has on a number of occasions applied individual rights secured under the First Amendment to the States through the Fourteenth Amendment. *See, e.g.,*

Cantwell v. Connecticut, 310 U.S. 296 at 303 (1940). However, the appellant in this case seeks to apply Article III, § 1 of the United States Constitution, which concerns the structure of the federal government not individual liberties, to the States. Such a proposition is wholly absurd. The doctrine of separation of powers has nothing to do with individual liberties secured under the First Amendment; rather, it concerns the structure and distribution of power among the three branches of the federal government. As this Court has indicated, States are free to structure their own governments in whatever manner they deem fit.

The purpose of applying the First Amendment to the States through the Fourteenth Amendment is to ensure that the fundamental rights of all citizens are protected. On the other hand, how a state distributes its powers between its branches of government is a decision left to the State not the federal government. To provide otherwise would constitute an unwarranted intrusion by the federal government into the structure of state governments and effectively emasculate the well-established constitutional doctrine of federalism.

———o———

CONCLUSION

Based upon the foregoing authorities and analyses, the appellee respectfully requests this Court to dismiss or affirm the appeal in this case.

Respectfully submitted,

CHARLES W. BURSON
Attorney General & Reporter
State of Tennessee
[Counsel of Record]

MICHAEL W. CATALANO
Deputy Attorney General
State of Tennessee

ANDY D. BENNETT
Deputy Attorney General
State of Tennessee

KEVIN STEILING
Assistant Attorney General
State of Tennessee
450 James Robertson Parkway
Nashville, Tennessee 37219

Counsel for Appellees